LAVETA O. SCHOEPHORSTER

IBLA 75-108 Decided March 3, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting appellant's application to purchase and canceling headquarters site application AA-3993.

Affirmed.

1. Alaska: Headquarters Sites--Hearings

   If an applicant for a headquarters site does not allege facts that, if taken as true, show that she uses the site in connection with a trade, manufacture, or other productive industry, the Bureau of Land Management may cancel her claim without a hearing.

2. Alaska: Headquarters Sites

   An applicant for a headquarters site does not establish that she is engaged in a trade, manufacture or other productive industry by showing an abandoned business which had only meager gross receipts.

3. Alaska: Headquarters Sites

   In order to meet the headquarters site law requirements, all the requirements of use, being in a business venture, etc., must be accomplished by the time the statutory life of the claim expires.

APPEARANCES: LaVeta O. Schoephorster, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On October 21, 1968, LaVeta O. Schoephorster (appellant) filed a notice of location of headquarters site (AA-3993) in

unsurveyed T. 22 N., R. 15 W., S.M., Alaska, on Finger Lake. In the application she stated that the site would be used as part of a trapping business. Appellant applied to purchase the land on October 19, 1973. Her purchase application stated that there was a 10 by 12 foot cabin on the land used for storage and for overnight and temporary headquarters during trapping operations. The application also included trapping licenses for 1969, 1970 and 1972 and fur receipts for $20.30.

On January 17, 1974, the Alaska State Office, Bureau of Land Management (BLM), stated that the proof submitted with the purchase application was inadequate and gave appellant ?? days to submit additional proof or show cause why the claim should not be canceled. BLM rejected the purchase application and canceled the claim on July 24, 1974, because appellant did not comply with this request.

Appellant now contends that although she no longer uses the site for trapping operations, she has, on several occasions, rented a cabin constructed in the fall of 1973 to hunters and sport fishermen. This use, she maintains, satisfies the requirements for a headquarters site. If the application to purchase is approved, she will build a home and two or three additional rental cabins on the site. She did not submit any receipts from renting the cabin.

[1] The Act of March 3, 1927, 44 Stat. 1354, 43 U.S.C. § 687a (1970), states in relevant part that a citizen of the United States engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands as a headquarters site under the rules and regulations prescribed by the Secretary of the Interior. 43 CFR 2563.1-1 states, among other requirements, that the applicant must show the actual use of the land for which she is applying and the nature of the trade, business, or other productive industry. If an applicant for a headquarters site does not allege facts that, if taken as true, show that she uses the site in connection with a trade, manufacture or other productive industry within the meaning of 43 U.S.C. § 687a (1970), the BLM may cancel her claim without a rearing. Vernon L. Nash, 17 IBLA 332, 336 (1974); Kathleen M. Smyth, 8 IBLA 425, 427 (1972). The burden is on appellant, as the applicant for a patent to land, to present evidence which shows compliance with the law and the regulations. Lee S. Gardner, A-30586 (September 26, 1966).

[2] Appellant's showing of use of the site for a now abandoned trapping operation, on its face, does not meet the requirements of 43 U.S.C. § 687a (1970). While it operated, the trapping operation produced receipts of only $20. In applicant who shows an abandoned business which had only meager gross receipts does not satisfy the requirement of being engaged in a trade, manufacture or other productive industry under 43 U.S.C. § 687a

(1970). John V. Vogt, 17 IBLA 87, 89 (1974); Lynn E. Erickson, 10 IBLA 11, 16, 80 I.D. 215, 217-18 (1973); Lee S. Gardner, supra. Since appellant's application to purchase did not show, on its face, that she had complied with the requirements of 43 U.S.C. § 687a (1970), the BLM properly canceled her claim without instituting a contest.

[3] The contention that appellant rents a cabin on the site was not made prior to this appeal. In her appeal, appellant states:

> At the time of staking and filing the original claim of entry on the site (fall 1968) my husband and I had been operating a "fly-in" trapline in western part of the Susitna Valley. We used our airplane for transportation over the line on an average of 2 or 3 times weekly. We needed and used the site for several seasons to store fuel and supplies, and for occasional overnite stays if time or weather prevented us from returning home. For various reasons the venture proved to be unprofitable. In the meantime, we received numerous requests from local guides, hunters, and fishermen for use of the site as a base camp for hunting and sportfishing. To facilitate these requests (after the trapping venture failed), we decided to construct a cabin suitable for rental. All materials had to be flown in and we completed construction in the fall of 1973. Since that time, we have rented the cabin several times to hunters and sport fishermen.

For the purpose of this decision we need not decide whether appellant's alleged use of rental of a cabin as a headquarters for others who may be engaged in a business enterprise establishes that she is in a business and the cabin is her headquarters. Even assuming it would be, it appears that this business use began after she filed her purchase application and was a different business use from that indicated on her application. The application was filed on October 19, 1973, two days before the expiration of the five-year period from the time of filing her notice of location. In order to meet the headquarters site law requirements, all requirements of use, being in a business venture, etc., must be accomplished by the time the statutory life of the claim expires. Going into business after that time would not suffice. See Lynn E. Erickson, supra. In her purchase application appellant did not assert any rental use of the site. Instead, she stated her business was trapping, and her use of a cabin was for storing her own equipment and temporary overnight uses in connection with her trapline. In view of the date of the purchase application, and her statement on appeal that a cabin was constructed "in the fall of 1973" and rented "since that time," it is extremely unlikely that the cabin was rented before October 21, 1973, the

expiration of the five- year period, or that it otherwise served as a headquarters for any actual business enterprise by applicant at that time. Cf. John V. Vogt, supra; Kathleen M. Smyth, supra.

Because appellant fails to allege facts which would show entitlement to purchase the tract under the Headquarters Act, we must uphold the BLM decision. Appellant was apprised by BLM several times of the necessity of making satisfactory showings, and given extensions of time to do so. We do not believe that granting a further opportunity in this case would be productive, or is warranted under the circumstances. 1/

Threfore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

1/ Judge Fishman, although recognizing that the making of a proper showing of entitlement to a trade and manufacturing site is improbable, nevertheless would be inclined to consider favorably a petition for reconsideration, buttressed by positive evidence, i.e., records of transactions, showing that appellant had rented cabins on the site from "the fall of 1973" until October 20, 1973, on more than an intermittent basis. The failure to make such assertion in the application for purchase, filed October 19, 1973, is not regarded by him as a fatal defect.